

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Douglas Ahle, Andrew Jordan, and William
Wiseman, individually and on behalf of
others similarly situated,

Civ. No. 09-42 (ADM/LIB)

Plaintiffs,

v.

REPORT AND RECOMMENDATION

Veracity Research Co.,

Defendant.

The above matter came before the undersigned United States Magistrate Judge on Defendants' motion for sanctions. (Dkt. 282). The matter has been referred to this Court for a report and recommendation under 28 U.S.C. § 636 and Local Rule 72.1.

On June 25, 2010, the Court found that certain opt-in Plaintiffs had failed to comply with Defendant's discovery, and as a consequence, the Court ordered the non-complying individuals to submit to the discovery. (Dkt. 261). A number of those individuals did not comply with the Court's June 25 Order, and on August 26, 2010, Defendant filed a motion for sanctions seeking dismissal of the non-complying Plaintiffs' claims.

On October 5, 2010, the Court found that a number of Plaintiffs had failed to comply with the Court's June 25 Order. As a consequence, the Court concluded that sanctions were warranted and that the appropriate sanction would be dismissal of the non-complying Plaintiffs' claims. However, given the severity of the sanction, the Court afforded the non-complying Plaintiffs one last opportunity to comply with Defendant's discovery, stating as follows:

[] Edward Arellano, Mark Colbert, Jason Lucas, Lisa
Martinez, Thomas McDowell, Christopher Reardon, Bradley

Schraer, Randy Sorrels, Devon Stovall, and Lionel Weber **must** submit executed responses to Defendant's written discovery **by no later than November 5, 2010**;

[] Edward Arellano, Mark Colbert, Anthony Garcia, Ken Pearce, and Paul Carson **must** appear for their depositions **by no later than November 5, 2010**;

[] The above-mentioned Plaintiffs are specifically forewarned that failure to comply with this Order **will result** in a recommendation that their claims be dismissed;

[] Upon Affidavit of Defendant's counsel attesting to any failure to comply with the above directives, which must be filed and served with the Court by no later than **November 12, 2010**, the Court will recommend to the District Court that the non-complying Plaintiffs' claims be dismissed with prejudice.

(Dkt. 299, pp. 11-12 [emphasis in original]).

Defendant's counsel has now submitted an affidavit attesting to the fact that, of the above-mentioned Plaintiffs, Lisa Martinez was the only individual to comply with his or her discovery obligations following the Court's October 5 Order. (Sokolowski Aff., Dkt. 303, ¶ 8 and ¶ 9). In addition, Ken Pearce voluntarily withdrew from this litigation on October 20, 2010. (Id. at ¶ 10). As a consequence, the following 11 opt-in Plaintiffs' claims are subject to dismissal pursuant to the Court's October 5 Order: Edward Arellano, Mark Colbert, Jason Lucas, Thomas McDowell, Christopher Reardon, Bradley Schraer, Randy Sorrels, Devon Stovall, Lionel Weber, Anthony Garcia, and Paul Carson.

These individuals have been afforded numerous opportunities to respond to Defendant's discovery, and they have now failed to comply with two Court orders without any explanation. The Court has already analyzed the parties' arguments regarding whether their claims should be dismissed, and it has already concluded that the claims of any Plaintiff who failed to comply with the Court's October 5 Order should be dismissed with prejudice. (Dkt. 299). The Court

relies upon its prior analysis and conclusions as contained in its Order of October 5, 2010. Accordingly, the Court recommends that the non-complying Plaintiffs' claims be dismissed for the willful failure to comply with their discovery obligations and two Court Orders.

RECOMMENDATION

Based on the foregoing and all of the files, records and proceedings herein, IT IS HEREBY RECOMMENDED that:

The claims of Plaintiffs Edward Arellano, Mark Colbert, Jason Lucus, Thomas McDowell, Christopher Reardon, Bradley Schraer, Randy Sorrels, Devon Stovall, Lionel Weber, Anthony Garcia, and Paul Carson be DISMISSED with prejudice as a sanction for their willful failure to comply with the Court's orders of October 5, 2010, and June 25, 2010, and their discovery obligations.


s/ Leo I. Brisbois
U.S. MAGISTRATE JUDGE

DATED: November 23, 2010

NOTICE

Pursuant to Local Rule 72.2(b), any party may object to this Report and Recommendation by filing with the Clerk of Court, and serving all parties **by December 7, 2010**, a writing that specifically identifies the portions of the Report to which objections are made and the bases for each objection. A party may respond to the objections within fourteen days of service thereof. Written submissions by any party shall comply with the applicable word limitations provided for in the Local Rules. Failure to comply with this procedure may operate as a forfeiture of the objecting party's right to seek review in the Court of Appeals. This Report and Recommendation does not constitute an order or judgment from the District Court, and it is therefore not directly appealable to the Court of Appeals.